

N16KBERP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

21 CR 458 (CM)

5 FILIPPO BERNARDINI,

6 Defendant.

7 -----x

8 New York, N.Y.
9 January 6, 2023
11:20 a.m.

Before:

10 HON. SARAH NETBURN,

Magistrate Judge

11 APPEARANCES

12
13
14 DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

15 RYAN FINKEL

Assistant United States Attorney

16
17 DAVID PATTON

FEDERAL DEFENDERS OF NEW YORK

Attorney for Defendant

18 BY: HANNAH McCREA

19 JENNIFER BROWN

N16KBERP

(Case called)

MR. FINKEL: Good morning, your Honor. Ryan Finkel,
for the government.

THE COURT: Good morning.

MS. McCREA: Good morning, your Honor. Hannah McCrea
for Mr. Bernardini, and I am joined at counsel table by
Jennifer Brown.

THE COURT: Thank you. Good morning.

Good morning, Mr. Bernardini. My name is
Judge Netburn.

THE DEFENDANT: Good morning. Good morning, your
Honor.

THE COURT: Thank you. Good morning.

Let's just set an agenda for today.

I understand that you have agreed to waive indictment
and are here to enter a plea as to an information. Is that
correct, sir?

MS. McCREA: That's correct, your Honor.

THE COURT: Okay.

What I am going to do is first arraign Mr. Bernardini
on the information, so we'll go over that preliminary process.
Typically, sir, someone enters a plea of not guilty at this
initial phase, which is called the arraignment phase. That's
the typical proceeding.

I understand that you're here for the purposes of

N16KBERP

1 entering a guilty plea, but for this preliminary part, it's
2 typical that you would enter a plea of not guilty, and then
3 we'll switch to the plea proceeding, at which point I
4 understand it's your intention to change that plea and enter a
5 plea of guilty as to the charge.

6 Do you understand all of that?

7 THE DEFENDANT: Yes, I understand, your Honor, yes.

8 THE COURT: We're doing this to make sure that your
9 rights are fully protected.

10 Do you need any time to speak with your lawyer about
11 this?

12 THE DEFENDANT: No, I'm fine, your Honor.

13 THE COURT: Okay.

14 So, the document that contains the charge that you
15 have indicated you wish to enter a plea as to is called an
16 information, and it has been issued by the United States
17 Attorney.

18 Under the Constitution, you have the right to be
19 charged by an indictment issued by a grand jury instead of by
20 an information like this. A grand jury is a group of 23
21 ordinary citizens that are called to jury service to hear the
22 government's evidence in criminal cases, and to decide whether
23 the evidence is sufficient to justify bringing you to trial.

24 In order to return an indictment, at least 12 of the
25 grand jurors must vote for the indictment, finding that there

N16KBERP

1 is probable cause to believe that an offense was committed, and
2 that you committed it.

3 You have the right to have these charges considered by
4 the grand jury, which means that without your consent, these
5 charges could not even be brought unless approved by the grand
6 jury. But if you waive indictment by the grand jury, the case
7 will proceed against you based on the United States Attorney's
8 information, just as if you had been indicted.

9 Do you understand all of that?

10 THE DEFENDANT: Yes, your Honor, I do understand.

11 THE COURT: A few moments ago, you were given a Waiver
12 of Indictment form that I see that you have signed.

13 Did you review this form with your attorney before you
14 signed it?

15 THE DEFENDANT: Yes, your Honor, I did.

16 THE COURT: And do you understand that by signing this
17 form, you are giving up your right to have your case presented
18 to the grand jury, and you are agreeing, instead, to allow the
19 charges to be filed by the United States Attorney?

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor, I do understand.

22 THE COURT: Have you discussed with your attorney the
23 advantages and disadvantages of waiving indictment?

24 THE DEFENDANT: Yes, your Honor, I did.

25 THE COURT: Have any threats or promises been made to

N16KBERP

1 you, other than by way of a written plea agreement, to get you
2 to waive indictment?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: I want to confirm that you wish to give up
5 your right to have this case presented to the grand jury.

6 THE DEFENDANT: Yes, yes, your Honor.

7 THE COURT: Thank you. It is accepted.

8 Now what I'm going to do, sir, is arraign you on this
9 information. At this phase, this preliminary phase, it is
10 typical that you enter a plea of not guilty, even though I
11 understand your intention is to plead guilty at a later phase.

12 Do you understand?

13 THE DEFENDANT: Yes, your Honor, I do.

14 THE COURT: Sir, you have been charged in a one-count
15 information. That count is for wire fraud, which is a
16 violation of Title 18 of the United States Code, Section 1343.

17 Have you received a copy of this information?

18 THE DEFENDANT: Yes, your Honor, I have.

19 THE COURT: Have you had an opportunity to review it
20 and discuss the charge with your lawyer?

21 THE DEFENDANT: Yes, your Honor, I have.

22 THE COURT: You have the right to have me read this
23 information to you in open court, if you would like, but you
24 can waive that right. Do you want me to read that information
25 to you?

N16KBERP

1 THE DEFENDANT: No, thank you, your Honor, no.

2 THE COURT: For purposes of the arraignment, how do
3 you plead?

4 THE DEFENDANT: Not guilty.

5 THE COURT: I'll enter a plea of not guilty on your
6 behalf for purposes of this arraignment.

7 THE DEFENDANT: Thank you, your Honor.

8 THE COURT: We're now going to march to the next
9 phase, which is the plea proceeding.

10 Are you ready to proceed?

11 THE DEFENDANT: Yes, your Honor, I am.

12 THE COURT: Sir, I have before me a consent to proceed
13 before a United States magistrate judge on a felony plea
14 allocution that you have signed. What this form says is that,
15 knowing you have the right to have this plea taken by a United
16 States district judge, you are agreeing, instead, to have this
17 plea taken by me, a United States magistrate judge.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor, I do.

20 THE COURT: Before you signed this form, did your
21 lawyer explain that to you?

22 THE DEFENDANT: Yes, yes, your Honor, she did.

23 THE COURT: Okay. It is accepted.

24 As we've been discussing, sir, you've been charged in
25 a one-count information. Count One charges you with wire

N16KBERP

1 fraud, in violation of Title 18 of the United States Code,
2 Section 1343. I have been informed that you wish to now change
3 your plea and enter a plea of guilty to this count.

4 Is that correct, sir?

5 THE DEFENDANT: Yes, your Honor, it is.

6 THE COURT: Before deciding whether to accept your
7 guilty plea, I'm going to ask you certain questions. It's very
8 important that you understand these questions and that you
9 answer them honestly and completely. The purpose of these
10 proceedings is to make sure that you understand your rights, to
11 decide whether you are pleading guilty of your own free will,
12 and to make sure that you are pleading guilty because you are
13 guilty and not for some other reason.

14 Do you understand what I'm saying?

15 THE DEFENDANT: Yes, your Honor, I do.

16 THE COURT: If at any point in time, you don't
17 understand my questions or you want a chance to speak with your
18 lawyer, please say so, because it's important that you
19 understand every question before you answer it.

20 Will you do that?

21 THE DEFENDANT: Yes, I will, your Honor.

22 THE COURT: Ms. Slusher, will you swear in the
23 defendant, please.

24 (Defendant sworn)

25 THE DEPUTY CLERK: Please be seated and state your

N16KBERP

1 full name for the record.

2 THE DEFENDANT: Filippo Bernardini.

3 THE COURT: Thank you, sir.

4 And you understand that you're now under oath, and if
5 you answer any of my questions falsely, you can be charged with
6 perjury?

7 THE DEFENDANT: Yes, your Honor, I do.

8 THE COURT: Mr. Bernardini, how old are you?

9 THE DEFENDANT: I'm 30 years old.

10 THE COURT: Are you a United States citizen?

11 THE DEFENDANT: No, I'm not.

12 THE COURT: What country are you a citizen of?

13 THE DEFENDANT: Italian, Italy.

14 THE COURT: Do you understand that your ability to
15 remain in the United States may be compromised as a result of
16 this conviction?

17 THE DEFENDANT: Yes, your Honor, I do understand.

18 THE COURT: And that as a result of your conviction,
19 you may be removed from the United States and denied
20 readmission to the United States in the future, and you might
21 also be denied citizenship in the future, do you understand all
22 of that?

23 THE DEFENDANT: Yes, your Honor, I do understand.

24 THE COURT: Do you understand that you will be bound
25 by your guilty plea regardless of those immigration

N16KBERP

1 consequences and regardless of any advice that you've received
2 from your lawyer or from anyone else?

3 Do you understand all of that?

4 THE DEFENDANT: Yes, your Honor, I do understand.

5 THE COURT: That being said, have you had an
6 opportunity to discuss with a lawyer the possible immigration
7 consequences of pleading guilty?

8 THE DEFENDANT: Yes, your Honor, we've discussed.

9 THE COURT: Notwithstanding those discussions, are you
10 still prepared to enter a guilty plea today?

11 THE DEFENDANT: Yes, your Honor, I am.

12 THE COURT: Mr. Bernardini, how far did you go in
13 school?

14 THE DEFENDANT: I received a Master's degree, so
15 university.

16 THE COURT: Was that in Italy or here in the U.S.?

17 THE DEFENDANT: In the United Kingdom.

18 THE COURT: In the United Kingdom.

19 What was your Master's in?

20 THE DEFENDANT: It was an M.A. in publishing.

21 THE COURT: Your English appears quite good. Can I
22 confirm that you can read and write English?

23 THE DEFENDANT: Yes, your Honor, I can. Thank you.

24 THE COURT: Thank you, sir.

25 Are you currently, or have you recently been, under

N16KBERP

1 the care of a doctor or psychiatrist for any reason?

2 THE DEFENDANT: Yes, your Honor, I've been talking to
3 a counselor that was scheduled by pretrial services, and I've
4 also been talking to a counselor based in the U.K. over the
5 last two months, just for general counseling.

6 THE COURT: Okay.

7 Without going into the reasons for that counseling, do
8 any of them affect your ability to answer my questions honestly
9 and completely?

10 THE DEFENDANT: No, your Honor, it would not affect.

11 THE COURT: Do you understand what's going on in these
12 proceedings?

13 THE DEFENDANT: Yes, yes, I do.

14 THE COURT: Have you consumed any pills or medication
15 or any drugs in the last 24 hours?

16 THE DEFENDANT: I've taken a paracetamol tablet.

17 MS. McCREA: Tylenol.

18 THE DEFENDANT: Tylenol, because I had a headache. So
19 that was everything.

20 THE COURT: Okay. Other than the Tylenol, have you
21 taken anything else in the last 24 hours?

22 THE DEFENDANT: No, your Honor, I have not.

23 THE COURT: What about alcohol?

24 THE DEFENDANT: No, your Honor, I have not.

25 THE COURT: Thank you.

N16KBERP

1 Is your mind clear today?

2 THE DEFENDANT: Yes, your Honor, it is.

3 THE COURT: Does the government have any objections to
4 the defendant's competence to enter a guilty plea at this time?

5 MR. FINKEL: No, your Honor.

6 THE COURT: And does defense have any objection?

7 MS. McCREA: No, your Honor.

8 THE COURT: Thank you.

9 Sir, have you received a copy of the written version
10 of the charge against you known as the information?

11 THE DEFENDANT: Yes, your Honor, I have.

12 THE COURT: I ask you some of these questions during
13 the arraignment phase. I'm going to ask them again.

14 Have you had a chance to read that information?

15 THE DEFENDANT: Yes, your Honor, I have.

16 THE COURT: Do you understand the nature of the
17 charges?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: You have the right to have me read that
20 information to you in open court, if you would like, or you can
21 waive that right.

22 Would you like me to read it to you in open court?

23 THE DEFENDANT: No, thank you. It's fine. Thank you.

24 THE COURT: As we discussed, you've been charged with
25 wire fraud, which is a violation of Title 18 of the United

N16KBERP

1 States Code, Section 3571. Do you understand that?

2 THE DEFENDANT: Yes, your Honor, I do.

3 THE COURT: Have you had time to talk with your
4 attorney about this charge and about how you wish to plead?

5 THE DEFENDANT: Yes, your Honor, I have.

6 THE COURT: Has she told you the consequences of
7 pleading guilty?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Are you satisfied with your attorney's
10 representation of you?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Sir, I'm now going to explain certain
13 constitutional rights that you have. These are rights that you
14 will be giving up if you enter a guilty plea. Please listen
15 carefully to what I am about to say, and if you don't
16 understand something, please stop me, and your attorney or I
17 will explain the matter more fully. Okay?

18 THE DEFENDANT: Okay, yes, your Honor.

19 THE COURT: Under the Constitution and the laws of the
20 United States, you have the right to plead not guilty to the
21 charge contained in this information. Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And if you pled not guilty, you would be
24 entitled, under the Constitution, to a speedy and public trial
25 by a jury of that charge. At that trial, you would be presumed

N16KBERP

1 innocent, and the government would be required to prove you
2 guilty beyond a reasonable doubt before you could be found
3 guilty. That means that you would not have to prove that you
4 are innocent, and you would not be convicted unless a jury of
5 12 people agreed unanimously that you are guilty beyond a
6 reasonable doubt.

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor, I do understand.

9 THE COURT: If you decided to go to trial, at that
10 trial, and at every stage of your case, you would have the
11 right to be represented by an attorney, and if you could not
12 afford an attorney, one would be appointed to represent you at
13 the government's expense and at no cost to you.

14 When an attorney is appointed, that attorney is
15 appointed to handle your case all the way through trial, and
16 not just for a guilty plea. So, your decision to plead guilty
17 here today should not depend on whether you can afford to hire
18 an attorney.

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor, I do understand.

21 THE COURT: During a trial, the witnesses for the
22 prosecution would have to come to court and testify in your
23 presence, where you could see and hear them, and your lawyer
24 could cross-examine those witnesses. And if you wanted, your
25 lawyer could offer evidence on your behalf. You would be able

N16KBERP

1 to use the Court's power to compel witnesses to come to court
2 to testify in your presence even if they did not want to come.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor, I do understand.

5 THE COURT: At a trial, you would have the right to
6 testify in your own defense if you wanted to, but you would
7 also have the right not to testify, and if you chose not to
8 testify, that could not be used against you in any way. No
9 inference or suggestion of guilt could be made from the fact
10 that you did not testify.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor, I do.

13 THE COURT: If you were convicted at trial, you would
14 have the right to appeal that verdict to a higher court. Do
15 you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And, as I said before, you have the right
18 to plead not guilty. Even right now, even as you sit here
19 today for the purposes of entering a guilty plea, you have the
20 right to change your mind, persist in your not-guilty plea, and
21 proceed to trial. But if you do plead guilty, and I accept
22 your plea, you will give up a trial and all of the other rights
23 that I have just described. If you plead guilty, there will be
24 no trial. All that will remain to be done will be to impose a
25 sentence. You and the government will have an opportunity to

N16KBERP

1 make arguments about what that sentence should be, but there
2 will not be any further trial to determine whether you are
3 guilty or not guilty of the charge to which you pled guilty.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor, I do.

6 THE COURT: Do you understand that the decision as to
7 the appropriate sentence in this case will be entirely up to
8 the sentencing judge, and she will only be limited by what the
9 law requires? This means that even if you are surprised or
10 disappointed by your sentence, you will still be bound by your
11 guilty plea.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor, I do.

14 THE COURT: Finally, if you do plead guilty, you will
15 be giving up your right not to incriminate yourself, and I will
16 ask you questions about what you did in order to satisfy myself
17 that you are actually guilty. By pleading guilty, you are
18 admitting to your factual, as well as your legal, guilt.

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor, I do.

21 THE COURT: You said earlier that you've read the
22 information containing the charge of wire fraud and understand
23 the nature of that charge. If the case were to proceed to
24 trial, the government would be required to prove beyond a
25 reasonable doubt all of the elements of that charge, so I'm now

N16KBERP

1 going to ask the government to set forth those elements.

2 MR. FINKEL: Thank you, your Honor.

3 With respect to the charge in Count One of the
4 information, wire fraud, violation of 18 U.S.C. 1343, the
5 government would need to prove the following elements beyond a
6 reasonable doubt:

7 First, there was a scheme or artifice to defraud or
8 obtain money or property by materially false and fraudulent
9 pretenses, representations, or promises;

10 Second, the defendant knowingly participated in the
11 scheme or artifice to defraud with knowledge of its fraudulent
12 nature and with intent to defraud;

13 And, third, in advancing, furthering, or carrying out
14 the scheme, the defendant transmitted or caused to be
15 transmitted a writing, signal, or sound by means of an
16 interstate or foreign wire communication.

17 In addition to those elements, the government would
18 need to prove venue by a preponderance of the evidence.

19 THE COURT: Thank you.

20 I just want to correct the record. I have been
21 reading the statute that's listed in my version of the plea
22 agreement that I have, which is dated January 3rd. I also have
23 the original version of the plea agreement, also dated
24 January 3rd, which seems to have the correct -- I see what I've
25 been doing. I take it back.

N16KBERP

1 I have been reading -- when I have indicated the
2 statute, I've been citing to the fine amount. When I have been
3 saying Title 18 of the United States Code, Section 3571, is
4 what I was saying, I have been mistaken. All of the documents
5 are correct, but let me just be clear -- the charge against you
6 for wire fraud, as the government just stated, is brought under
7 Title 18 of the United States Code, Section 1343. I think
8 previously I indicated that it was brought under 3571; that is
9 not correct, it's brought under 1343. So, earlier, when I
10 stated the wrong statute, you should understand that, in fact,
11 the statute is 1343.

12 Do you understand that, sir?

13 THE DEFENDANT: Yes, your Honor, yes.

14 THE COURT: I apologize for my confusion.

15 Do you need a moment to speak with your lawyer?

16 THE DEFENDANT: No, your Honor, I do not.

17 THE COURT: I've just reviewed it. It appears that we
18 all have the same plea agreement. I just highlighted the wrong
19 version. So, the plea agreement is correct. I checked. The
20 information is correct. It's just what I said was incorrect.

21 Okay, good. Apologies again.

22 I'm now going to tell you the maximum possible penalty
23 for this crime. The maximum means the most that could possibly
24 be imposed. It does not necessarily mean this is what you will
25 receive, but you have to understand that by pleading guilty

N16KBERP

1 here today, you are exposing yourself to any combination of
2 punishment up to the maximum.

3 Do you understand all of that?

4 THE DEFENDANT: Yes, your Honor, I do understand.

5 THE COURT: For this offense, there is a maximum term
6 of imprisonment of 20 years, and there is a maximum term of
7 supervised release of three years.

8 Supervised release means that if you are sentenced to
9 prison and thereafter released from prison, you may be subject
10 to supervision by the probation department. You should
11 understand that if you are placed on supervised release and
12 then violate any of the terms or conditions of that release,
13 the district judge that sentences you can revoke your term of
14 supervised release and return you to prison without giving you
15 any credit for the time you served on postrelease supervision.

16 Second, in addition to these restrictions on your
17 liberty, the maximum possible punishment also includes certain
18 financial penalties. In this case, the maximum allowable fine
19 is the greatest of \$250,000 or twice what was made by the
20 criminal activity or twice what someone other than yourself
21 lost because of the criminal activity.

22 In addition, there is a mandatory special assessment
23 of \$100 that must be imposed for the count of conviction.

24 Sir, has anybody threatened you or coerced you in any
25 way to get you to plead guilty?

N16KBERP

1 THE DEFENDANT: No, your Honor.

2 THE COURT: Has anyone, other than the prosecution and
3 solely by way of this written plea agreement, promised you or
4 offered you anything to get you to plead guilty?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: And as I just referenced, there is an
7 agreement between you and the government concerning this plea;
8 is that correct?

9 THE DEFENDANT: Yes, your Honor, it is correct.

10 THE COURT: Have you read that plea agreement?

11 THE DEFENDANT: Yes, your Honor, I have.

12 THE COURT: And have you had an opportunity to discuss
13 the terms with your lawyer?

14 THE DEFENDANT: Yes, your Honor, I have.

15 THE COURT: I see that you signed the agreement; is
16 that correct?

17 THE DEFENDANT: Yes, your Honor, it is.

18 THE COURT: Did you sign the agreement after you read
19 it and discussed it with your lawyer?

20 THE DEFENDANT: Yes, your Honor, I have.

21 THE COURT: I want to go over some of the important
22 terms of this agreement.

23 First, with respect to sentencing, you and the
24 government have agreed that the appropriate calculation of your
25 sentence under the sentencing guidelines is 15 to 21 months'

N16KBERP

1 imprisonment.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor, I do.

4 THE COURT: In addition, you've agreed that the
5 appropriate fine range is between \$7,500 and \$75,000. Do you
6 understand that?

7 THE DEFENDANT: Yes, your Honor, I do.

8 THE COURT: In this agreement, you and the government
9 have agreed that neither party will seek a departure or an
10 adjustment pursuant to the sentencing guidelines that's not
11 otherwise set forth in this agreement.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor, I do.

14 THE COURT: However, either party may seek a sentence
15 that is outside of the stipulated guidelines range that's based
16 on the factors that you can find in our sentencing statute,
17 which is located at Title 18 of the United States Code,
18 Section 3553(a).

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor, I do.

21 THE COURT: In this agreement, you acknowledge that
22 the Court must order restitution. Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: In addition, you've admitted to the
25 forfeiture allegations with respect to Count One of the

N16KBERP

1 information, and you've agreed to forfeit a sum of money that
2 is traceable to the proceeds of the offense.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: In addition, you've agreed that you will
6 make restitution in an amount of at least \$88,000, as ordered
7 by the Court. Do you understand that?

8 THE DEFENDANT: Yes, your Honor, I do.

9 THE COURT: In this agreement, you have agreed to
10 limit, in certain respects, your ability to appeal from your
11 conviction. Specifically, you've agreed that you will not file
12 a direct appeal or bring a collateral challenge, sometimes
13 called a habeas motion, or seek a sentence modification so long
14 as the sentence is within or below the stipulated guidelines
15 range of 15 to 21 months' imprisonment.

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor, I do.

18 THE COURT: In addition, you've agreed that you will
19 not appeal or bring a collateral challenge to any term of
20 supervised release that is less than or equal to three years,
21 and that you will not bring an appeal or collateral challenge
22 to any fine that is less than or equal to \$75,000, and that you
23 will not bring any appeal or collateral challenge to any
24 restitution amount that is less than or equal to \$88,000.

25 Do you understand all of that?

N16KBERP

1 THE DEFENDANT: Yes, your Honor, I do.

2 THE COURT: In addition, as we discussed earlier,
3 because you are not a citizen of the United States, you
4 understand that your guilty plea and conviction makes it very
5 likely that you will be removed from the United States.

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor, I do.

8 THE COURT: In addition, you may suffer other adverse
9 immigration consequences, including that you may be denied
10 admission in the future into the United States. Do you
11 understand all of that?

12 THE DEFENDANT: Yes, your Honor, I do.

13 THE COURT: And you've represented to me that you have
14 had an opportunity to discuss these immigration consequences
15 with a lawyer; is that correct?

16 THE DEFENDANT: Yes, your Honor, it is.

17 THE COURT: Do you understand that you will not be
18 able to withdraw your guilty plea as a result of those
19 immigration consequences, regardless of the advice that you
20 have received?

21 Do you understand that?

22 THE DEFENDANT: Yes, your Honor, I do.

23 THE COURT: In addition, you have agreed that you will
24 not challenge your conviction on direct appeal or through any
25 sort of collateral challenge based on those immigration

N16KBERP

1 consequences, including removal.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor, I do.

4 THE COURT: One of the most important things for you
5 to understand is that this agreement is not binding on the
6 sentencing judge, and that the sentencing judge may reject the
7 calculations and recommendations set forth in this agreement,
8 and may impose a more severe punishment without allowing you to
9 withdraw your guilty plea.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor, I do.

12 THE COURT: The sentencing judge is required to make
13 her own independent calculation under the sentencing guidelines
14 and then impose a sentence based on what she believes is the
15 appropriate sentence for you, even if it is different than the
16 one set forth in this agreement.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor, I do.

19 THE COURT: In determining that sentence, the Court
20 will consider, in addition to the guidelines and possible
21 departures from those guidelines, all of the factors that are
22 set forth in our sentencing statute, which I mentioned earlier,
23 and which is located at Title 18 of the United States Code,
24 Section 3553(a). Those factors include: The nature and
25 circumstances of the offense and the history and

N16KBERP

1 characteristics of you, the defendant; the need for the
2 sentence imposed; the kinds of sentences that are available;
3 the sentencing range provided under the guidelines; the need to
4 avoid sentencing disparities; and the need to provide
5 restitution to victims.

6 In addition, the Court will consider a presentence
7 report which is prepared by the probation department in advance
8 of your sentencing. Before you are sentenced, you and the
9 government will have an opportunity to challenge the facts that
10 are reported by the probation officer.

11 Do you understand all of that?

12 THE DEFENDANT: Yes, your Honor, I do.

13 THE COURT: Now that you have been advised of the
14 charge against you, the possible penalties that you face, and
15 the rights that you are giving up, is it still your intention
16 to plead guilty to Count One for wire fraud?

17 THE DEFENDANT: Yes, your Honor, it is.

18 THE COURT: So, with respect to Count One, how do you
19 plead?

20 THE DEFENDANT: Guilty, your Honor.

21 THE COURT: Can you tell me, in your own words, why
22 you believe you are guilty of this charge?

23 THE DEFENDANT: Starting around August 2016 until the
24 time I was arrested, I made misrepresentations over the
25 internet in order to fraudulently obtain a published literary

N16KBERP

1 manuscript. I understand that some of the people I defrauded
2 were here in Manhattan. I knew my actions were wrong.

3 THE COURT: Any additional questions you'd like me to
4 ask the defendant?

5 MR. FINKEL: No, your Honor.

6 THE COURT: You believe that's a sufficient allocution
7 for the charge?

8 MR. FINKEL: Yes.

9 THE COURT: Do you want to proffer the evidence you
10 would present if the case were to proceed to trial?

11 MR. FINKEL: Yes, your Honor.

12 If this case were to proceed to trial, the
13 government's evidence would include, among other things:
14 Electronic communications, stolen manuscripts, and witness
15 testimony, which would establish that the defendant took part
16 in a more than six-year scheme to impersonate hundreds of
17 individuals involved in the publishing industry and steal more
18 than a thousand prepublication manuscripts.

19 The evidence would also establish that the defendant
20 executed a phishing scheme to steal the log-in information of
21 more than 20 individuals to access a publishing industry
22 database. The communications in question involve the
23 defendant's transmission and receipt of emails to and from
24 victims located in the Southern District of New York.

25 THE COURT: Thank you.

N16KBERP

1 Sir, on the basis of your responses to my questions
2 and my observation of your demeanor, I find that you are
3 competent to enter a guilty plea. I'm satisfied that you
4 understand your rights, including your right to go to trial and
5 your right to have the case considered by the grand jury, and
6 you're aware of the consequences of your plea, including the
7 sentence that may be imposed and the immigration consequences
8 that may follow, and that you are voluntarily pleading guilty,
9 and that you've admitted that you are guilty as charged in
10 Count One of the information.

11 For these reasons, I'll recommend to District Judge
12 McMahon that she accept your plea of guilty as to Count One of
13 the information, and I will direct that the government order a
14 copy of the transcript and submit it to Judge McMahon so that
15 she may act on my recommendation.

16 Has she set a sentencing date yet?

17 MR. FINKEL: Yes, your Honor. April 5th, at noon.

18 THE COURT: All right. I'll direct that the
19 presentence report be prepared.

20 Can the government submit a case summary for purposes
21 of the presentence report within 14 days?

22 MR. FINKEL: Yes, your Honor.

23 THE COURT: And, counsel, can you and your client be
24 available in the next 14 days to be interviewed by probation?

25 MS. MCCREA: Yes, your Honor.

N16KBERP

1 THE COURT: Okay.

2 Any objection to continuing the present bail?

3 MR. FINKEL: No, your Honor.

4 THE COURT: Sir, all of the conditions on which you
5 are released up to now continue to apply, and a violation of
6 those conditions can have serious consequences, including
7 revocation of bail and prosecution for bail-jumping.

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor, I do.

10 THE COURT: In addition, if you commit an offense
11 while you are released, you may be subject to a more severe
12 punishment than you would get if you committed the same
13 offense, and, obviously, if you commit an offense or violate
14 any of the terms of the plea agreement by the government, you
15 may be subject to revocation of that agreement by the
16 government, with all of the consequences that are set forth in
17 the plea agreement.

18 Anything further from the government?

19 MR. FINKEL: No, your Honor. Thank you.

20 THE COURT: Anything further from defense?

21 MS. McCREA: No.

22 THE COURT: Okay. We are adjourned.

23 THE DEFENDANT: Thank you.

24 * * *